

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
(BOSTON)

Nancy Brooks and Joan Silverman, as
Trustees of the Irrevocable Trust of Donald L.
Silverman and as Executrices for the Estate of
Donald L. Silverman

Plaintiffs,

v.

AIG SunAmerica Life Assurance Company,

Defendant.

05 10994 WGY

Civil Action No. 05-10994
RECEIPT #
AMOUNT \$ 30.00
SUMMONS ISSUED 1
LOCAL RULE 4.1
WAIVER FORM
MCF ISSUED
BY DFTY. CLK. M.P.
DATE 5/13/2005

CLASS ACTION COMPLAINT AND JURY DEMAND

1. Defendant raised the cost of insurance ("COI") rates on plaintiffs' and all similarly situated persons' policies in breach of their policy's terms and/or in violation of each plaintiff's state's respective consumer protection statute.

THE PARTIES

MAGISTRATE JUDGE LTS

2. The named plaintiffs, Nancy Brooks and Joan Silverman, are trustees of the Irrevocable Trust of Donald L. Silverman and executrices of the Estate of Donald L. Silverman. Prior to his death in June 2001, Mr. Silverman was a resident of Swampscott, Massachusetts, and was the insured under Mutual Benefit Life of New Jersey ("Mutual Benefit Life") Policy AL101958, which had a Policy Issue Date of May 1, 1984. At the time of Mr. Silverman's death in June of 2001, the Irrevocable Trust of Donald L. Silverman owned Mutual Benefit Life Policy AL101958.

3. Defendant AIG SunAmerica Life Assurance Company ("SunAmerica") is an Arizona corporation with a corporate headquarters and principle place of business at 1 SunAmerica Center, Los Angeles, CA 90067.

JURISDICTION AND VENUE

4. Jurisdiction is proper pursuant to 28 U.S.C. §§ 1332 because the amount in controversy for the named plaintiffs exceeds \$75,000, the amount in controversy for the Class exceeds \$5,000,000 and/or there is diversity between the named plaintiffs and the defendant.

5. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a), because a substantial part of the events or omissions giving rise to the claim occurred here.

CLASS ALLEGATIONS

6. Plaintiffs bring this class action under Rule 23(a) and (b)(3) on behalf of a Class consisting of all persons who (1) purchased a life insurance policy from Mutual Benefit Life, (2) converted their policy to a common form policy during the rehabilitation of MBL and (3) following that rehabilitation, had their policies assumed by SunAmerica.

7. Plaintiffs do not yet know the exact size of the Class because such information is in defendant's exclusive control, but believe that the total number of Class members numbers in the thousands and that they are located throughout the country. Consequently, joinder of all members of the Class would be impracticable.

8. Plaintiffs will fairly and adequately protect the interests of the Class members, and has engaged experienced and competent class counsel. Plaintiffs have no interests antagonistic to those of the other members of the Class.

9. Plaintiffs' claims are typical of the claims of the Class in that each was forced to pay higher policy premiums because of defendants' increase in COI rates in violation of the terms of their policy.

10. The rights of Plaintiffs and the Class involve common questions of law and fact that would predominate over questions affecting only individual members of the

Class. Whatever difficulties may exist in the management of the Class are generally outweighed by the advantage of that procedure, including but not limited to providing claimants with a method for redress of claims that might otherwise not warrant individual litigation.

11. The questions of law and fact common within the Class include, but are not limited to:

- a. whether defendant increased COI rates in violation of the terms of the relevant insurance contracts;
- b. whether defendant's conduct in increasing COI rates violated state consumer protection statutes;
- c. whether defendant's failure to adequately disclose the manner in which it had calculated increases in COI rates constitutes a separate and distinct violation of state consumer protection statutes;
- d. the measure of damages by which defendants' conduct injured all members of the Class; and
- e. whether the Class is entitled to injunctive relief as a result of defendant's continuing conduct.

12. Class action treatment is superior to the alternatives, if any, for the fair and efficient adjudication of this controversy, because it permits a large number of injured persons to prosecute their common claims in a single forum simultaneously, efficiently and without unnecessary duplication of evidence and effort. Class treatment will also permit the adjudication of smaller claims by Class members, for whom it would not be economically rational to litigate individually against a large corporate defendant.

GENERAL ALLEGATIONS

13. Up until approximately 1994, Mutual Benefit Life was a solvent mutual life insurance company that sold, among other insurance products, “flexible premium” universal life insurance policies such as the one Mr. Silverman purchased in 1984.

14. On or about July 16, 1991, Mutual Benefit Life was placed in rehabilitation by the New Jersey Commissioner of Insurance at least in part because of questions concerning its ongoing ability to pay claims.

15. In May of 1994, substantially all of Mutual Benefit Life’s assets and liabilities were transferred to MBL Life Assurance Corporation (“MBL Life Assurance”) under a rehabilitation plan adopted by the New Jersey Commissioner of Insurance and approved by the New Jersey Superior Court (the “Rehabilitation Plan”).

16. Mutual Benefit Life policyholders such as Mr. Silverman were given the choice of either opting out of the Rehabilitation Plan or having their policies temporarily restructured (in ways that are not relevant to this litigation) to a common form policy and transferred to MBL Life Assurance.

17. On June 30, 1999, pursuant to the Rehabilitation Plan, Anchor National Life Insurance Company (“Anchor”), a SunAmerica company, formally acquired the block of policies that MBL Life Assurance had acquired from Mutual Benefit Life (the “Mutual Benefit Block of Policies”). Also pursuant to the Rehabilitation Plan, the temporary restructuring of the Mutual Benefit Block of Policies into common form policies expired and the original terms of the Class members’ policies controlled again. Anchor and/or SunAmerica have administered the Mutual Benefit Block of Policies, including Mr. Silverman’s policy, at all times thereafter. (Anchor and SunAmerica are sometimes referred to collectively herein as “SunAmerica.”)

18. From the time it acquired them in 1999 until at least 2002, SunAmerica has increased the COI rates on the Mutual Benefit Block of Policies each year in the following manner (the “COI Rate Increases”):

<u>Year</u>	<u>COI Increase per \$1000 per month (\$)</u>	<u>COI Increase (%)</u>
1999-2000	From \$5.14 to \$6.52 = \$1.38	24%
2000-01	From \$6.52 to \$7.12 = \$0.60	9%
2001-02	From \$7.12 to \$7.95 = \$0.83	11%

19. There are two criteria that SunAmerica had to meet before raising COI Rates. First, as the controlling policy language in the Mutual Life Block of Policies states, “Any change in [COI] rates will be in accordance with any procedures and standards on file with the Insurance Department of the jurisdiction in which the policy is delivered.” Second, any COI Rate Increases had to be less than the maximum guaranteed rates set out in the insurance policy’s COI Rate Table.

20. Upon information and belief, the COI Rate Increases were **NOT** made “in accordance with any procedures and standards on file with the Insurance Department of the jurisdiction in which” any of the Mutual Life Block of Policies were delivered.

21. As a result, the COI Rate Increases are in breach of the terms of the policy language of the Mutual Life Block of Policies and are therefore invalid even if the COI Rate Increases were less than the guaranteed maximum increases set out in the policy’s COI Rate Table.

22. SunAmerica fraudulently concealed that it had made the COI Rate Increases in violation of the relevant insurance policy’s terms by misrepresenting to the named plaintiffs and their agents several times between 2001 and the present that the

Rehabilitation Plan authorized it to make the COI Rate Increases. To the contrary, the truth, which SunAmerica knew or should have known, is that the COI Rate Increases were governed by the insurance policy language quoted above in ¶ 19.

23. The statute of limitations is tolled by the discovery rule. The named plaintiffs did not know, and in the exercise of reasonable diligence could not have known, that SunAmerica made the COI Rate Increases in violation of the terms of their policy because SunAmerica has refused to disclose to them the method by which it calculates COI Rate Increases and the information is not available anywhere else.

COUNT I: Breach of Contract

24. Plaintiffs incorporate the foregoing paragraphs as if fully set forth herein.

25. There is a contract (insurance policy in the Mutual Life Block of Policies) between SunAmerica and each Class member.

26. The policy language in the contracts in the Mutual Life Block of Policies sets forth the terms under which SunAmerica can make COI Rate Increases.

27. SunAmerica breached those contracts by making COI Rate Increases in violation of the terms of the policies in the Mutual Life Block of Policies.

28. SunAmerica's breach directly and proximately damaged each Class member in an amount to be determined at trial by raising his/her premiums in an amount approximately equal to the unauthorized increase in COI rates.

COUNT II: Breach of Implied Duty of Good Faith and Fair Dealing

29. Plaintiffs incorporate the foregoing paragraphs as if fully set forth herein.

30. SunAmerica breached the implied covenant of good faith and fair dealing contained in each Class Member's insurance policy by making the COI Rate Increases.

31. SunAmerica's breach directly and proximately damaged each Class member in an amount to be determined at trial by raising his/her premiums in an amount approximately equal to the unauthorized increase in COI rates.

COUNT III: Violation of Massachusetts Consumer Protection Statute

32. Plaintiffs incorporate the foregoing paragraphs as if fully set forth herein.

33. By making unauthorized COI Rate Increases, SunAmerica committed an unfair or deceptive act or practice within the meaning of MGLC 93A.

34. Plaintiffs served an MGLC 93A demand letter on SunAmerica but SunAmerica refused to make a reasonable offer of settlement either to the named plaintiffs or the Class.

35. SunAmerica's unfair or deceptive acts or practices have violated MGLC 93A and proximately injured the named plaintiffs and the Class in an amount to be determined at trial.

36. Because SunAmerica's violations of MGLC 93A have been willful and knowing and/or its refusal to grant class-wide relief upon demand was made in bad faith with knowledge or reason to know that the act or practice complained of violated MGLC 93A, the named plaintiffs and the Class are entitled to treble damages, attorneys' fees and expenses.

COUNT IV: Violation of California Unfair Business Practices Act

37. Plaintiffs incorporate the foregoing paragraphs as if fully set forth herein.

38. SunAmerica's conduct in making unauthorized COI Rate Increases constitutes and unlawful and/or unfair business practice within the meaning of the California Unfair Business Practices Act.

39. SunAmerica's conduct emanated from its corporate headquarters in Los Angeles, CA.

40. SunAmerica's conduct was unfair because it raised premiums without authorization for policyholders who had no choice but to pay the increases or surrender the policy.

41. SunAmerica's conduct was unlawful because it made COI Rate Increases in violation of the procedure it had on file with each state's Division of Insurance and/or unjustly enriched itself at the expense of the plaintiffs.

42. As a direct and proximate result of its conduct, SunAmerica has received, and continues to hold, ill-gotten gains that belong to the plaintiffs.

43. Plaintiffs are accordingly entitled to damages and equitable relief in the form of restitution and disgorgement of all earnings, profits, compensation and benefits obtained by SunAmerica as a result of such unfair and/or unlawful business practices.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request:

A. That this action may be maintained as a class action under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure and that notice to the Class be provided in compliance with Fed. R. Civ. P. 23(c)(2);

B. That the Court hold that SunAmerica breached its insurance contract with plaintiffs and the Class and/or breached the implied duty of good faith and fair dealing and/or violated the Massachusetts Consumer Protection Statute and/or violated the California Unfair Business Practices Act;

C. That judgment be entered against SunAmerica and in favor of the Plaintiffs and the members of the Class for damages as allowed by law and/or restitution

by equity, together with costs of suit (including expert costs), and reasonable attorney fees as provided by law;

D. That the judgment so entered include trebling of damages determined to have been sustained by Plaintiffs and the members of the Class for damages as allowed by law, together with costs of suit (including expert costs), and reasonable attorney fees as provided by law;

F. That SunAmerica be enjoined from increasing COI Rates in breach of the terms of its own insurance policies;

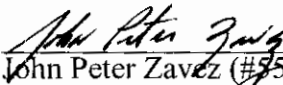
G. That the Court award Plaintiffs and members of the Class pre-judgment and post-judgment interest as permitted by law; and

H. That the Court award Plaintiffs and members of the Class such other and further relief as may be necessary and appropriate.

JURY DEMAND

Plaintiffs demand a trial by jury, pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, of all issues triable of right by a jury.

DATED: 12 May 2005



John Peter Zavez (#55721)
Noah Rosmarin (#630632)
ADKINS KELSTON & ZAVEZ, P.C.
90 Canal Street
Boston, MA 02114
Tel: (617) 367-1040
Fax: (617) 742-8280

* JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Nancy Brooks and Joan Silverman, as Trustees of the Irrevocable Trust of Donald L. Silverman and as Executrices for the Estate of Donald L. Silverman

(b) County of Residence of First Listed Plaintiff Essex County, MA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

John P. Zavez, Adkins, Kelston & Zavez, P.C.
90 Canal Street, 5th Fl., Boston, MA 02114 (617) 367-1040

DEFENDANTS

AIG Sun-America Life Assurance Company

County of Residence of First Listed Defendant Los Angeles, CA
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE

LAND INVOLVED
05 10994 WGY
Agency (Unknown)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Label & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. Section 1332

Brief description of cause:

Defendant breached the plaintiff's insurance contract by raising the insurance rates in violation of the policy.

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ 100,000

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE N/A

DOCKET NUMBER

DATE

05/13/2005

SIGNATURE OF ATTORNEY OF RECORD

John P. Zavez

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Nancy Brooks as Trustee of the Irrevocable Trust of
Donald L. Silverman v. AIG Sun-America Life Assurance Company
2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).
- ☐ I. 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT.
- ☐ II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, *Also complete AO 120 or AO 121
740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. for patent, trademark or copyright cases
- ☒ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310,
315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371,
380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 480, 490, 510, 530, 610, 620, 630, 640, 650, 660,
690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.
3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.
None
4. Has a prior action between the same parties and based on the same claim ever been filed in this court?
YES ☐ NO ☒
5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)
YES ☐ NO ☒
If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?
YES ☐ NO ☐
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?
YES ☐ NO ☒
7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).
YES ☒ NO ☐
- A. If yes, in which division do all of the non-governmental parties reside?
Eastern Division ☒ Central Division ☐ Western Division ☐
- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?
Eastern Division ☐ Central Division ☐ Western Division ☐
8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)
YES ☐ NO ☐
- (PLEASE TYPE OR PRINT)
ATTORNEY'S NAME John P. Zavez
ADDRESS Adkins, Kelston & Zavez, P.C., 90 Canal St., 5th Floor, Boston, MA 02114
TELEPHONE NO. (617) 367-1040

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